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Entered: 5 July 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JEAN-LUC CAILLAT
Junior Party
(Patent 6,206,652),

v.

ALEXANDER LIFSON
Senior Party
(Application 09/921,334).

Patent Interference No. 105,288

Before: LEE, MEDLEY and MOORE, Administrative Patent Judges.

MEDLEY, Administrative Patent Judge.

Judgment - Bd.R. 127(b)

On 29 June 2005, the board received from the party Caillat "CAILLAT'S 37 CFR 41.127(2)(B) REQUEST FOR ADVERSE JUDGMENT" (Paper 47), in which Caillat requests and agrees to entry of adverse judgment and "SENIOR PARTY LIFSON'S REQUEST FOR ENTRY OF ADVERSE JUDGMENT" in which Lifson requests and agrees to entry of adverse judgment (Paper 48).

In Lifson's request for adverse judgment, Lifson states that it requests entry of adverse judgment with respect to the count and thus with respect to Lifson's claims 4-6, 8-10, 12, 14, 15, 17-19, 22, 24, 25 and 29-37 (Paper 48). The list of claims is not an accurate list of those Lifson claims that are designated as corresponding to the count (Paper 1 at 4). To the extent that Lifson is attempting to limit the effects of the requested adverse judgment, such attempts have been accorded no weight and will be accorded no weight in future prosecution by Lifson before the USPTO. The estoppel effects of Bd.R. 127(a) apply in full force, no matter how Lifson has attempted to limit its concession of priority. Eli Lilly and Co. v. Cameron, 61 USPQ 1863 (Bd.Pat.App. & Int. 2001). The decision to enter judgment against Lifson is based solely upon Lifson's request for adverse judgment.

Should either party believe that Lifson's request for adverse judgment has been "misapprehended," the party may file a request for rehearing under Bd.R. 127(d).

Upon consideration of the record, it is

ORDERED that judgment on priority as to Count 1 (Paper 1 at 4) is awarded against junior party JEAN-LUC CAILLAT.

FURTHER ORDERED that junior party JEAN-LUC CAILLAT is not entitled to a patent containing claims 1-6, 11, 14-17 and 21-27 (corresponding to Count 1) of U.S. patent 6,206,652.

FURTHER ORDERED judgment on priority as to Count 1 (Paper 1 and 4) is awarded against senior party ALEXANDER LIFSON.

FURTHER ORDERED that senior party ALEXANDER LIFSON is not entitled to a patent containing claims 4-12, 14, 15, 17-19, 21, 22, 24, 25, 27 and 29-38 (corresponding to Count 1) of application 09/921,334.

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 09/921,334 and U.S. Patent 6,206,652.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c)) and Bd.R. 205.

)	
<u>/ss/ Jameson Lee</u>)	
JAMESON LEE)	
Administrative Patent Judge)	
)	BOARD OF PATENT
<u>/ss/ Sally C. Medley</u>)	APPEALS
SALLY C. MEDLEY)	AND INTERFERENCES
Administrative Patent Judge)	
)	
<u>/ss/ James T. Moore</u>)	
JAMES T. MOORE)	
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From: Townes, Yolunda on behalf of Interference Trial Section

Sent: Tuesday, July 05, 2005 5:45 PM

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Subject: Interference #105288_051 (SCM) - Judgment - Bd.R. 127(b)

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